



1 “(1) A claim presented in a second or successive habeas corpus  
2 application under section 2254 that was presented in a prior  
3 application shall be dismissed.

4 (2) A claim presented in a second or successive habeas corpus  
5 application under section 2254 that was not presented in a prior  
6 application shall be dismissed unless --

7 (A) the applicant shows that the claim relies on a new  
8 rule of constitutional law, made retroactive to cases on  
9 collateral review by the Supreme Court, that was  
10 previously unavailable; or

11 (B)(i) the factual predicate for the claim could not have  
12 been discovered previously through the exercise of due  
13 diligence; and

14 (ii) the facts underlying the claim, if proven and  
15 viewed in light of the evidence as a whole, would be  
16 sufficient to establish by clear and convincing evidence  
17 that, but for constitutional error, no reasonable  
18 factfinder would have found the applicant guilty of the  
19 underlying offense.

20 (3)(A) Before a second or successive application permitted by this  
21 section is filed in the district court, the applicant shall move in the  
22 appropriate court of appeals for an order authorizing the district  
23 court to consider the application.”  
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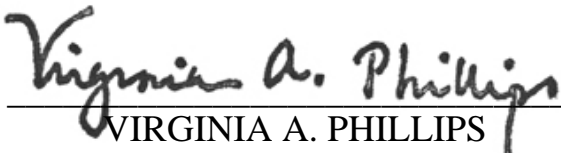
25 The Petition now pending constitutes a second and/or successive petition  
26 challenging the same conviction as petitioner’s prior habeas petition in Case No.  
27 EDCV 00-406 RT (Mc), within the meaning of 28 U.S.C. § 2244(b). To the  
28 extent petitioner seeks to pursue a claim not contained in the earlier Petition, it

1 was incumbent on him under § 2244(b)(3)(A) to secure an order from the Ninth  
2 Circuit authorizing the District Court to consider the Petition, prior to his filing of  
3 it in this Court. Petitioner's failure to do so deprives the Court of subject matter  
4 jurisdiction. To the extent the instant Petition merely asserts any claims that were  
5 previously asserted, the Petition is subject to dismissal pursuant to § 2244(b)(1).

6 For the foregoing reasons, IT IS ORDERED that this action be summarily  
7 dismissed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the  
8 United States District Courts.

9 LET JUDGMENT BE ENTERED ACCORDINGLY.

10  
11 DATED: October 21, 2009

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13   
14 VIRGINIA A. PHILLIPS  
15 United States District Judge

16 Presented by:

17  
18 /S/ Frederick F. Mumm  
19 FREDERICK F. MUMM  
20 United States Magistrate Judge  
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